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Continuing Education Code Revisited

In May 1998, the New Jersey State Board of Education adopted code establishing the requirement that teachers and other instructional personnel complete 100 clock hours of state-approved professional development every five years. While many of the critical details have yet to be determined, a number of significant developments have occurred over the past year. Chief among these developments are a revised implementation date, the ongoing establishment of the state, county and local boards, and the impact of the code upon the local negotiations process including what union proposals are seeking.

Briefly... The adopted code states that the contents of teachers' continuing education must be specified in their Professional Improvement Plans developed as part of the annual evaluation. This professional development may include inservice programs, formal course work, and conferences sponsored by entities approved by the commissioner of education. The code establishes structures at the state, county and local levels to develop common standards. These standards are used to "assure that the required continuing education experiences are challenging and meaningful to teachers and relevant to the task of enabling students to achieve high academic standards."

At the state level, the Professional Teaching Standards Board (PTSB) recommends to the commissioner the standards and criteria for the approval of continuing education programs and providers. At the county level, a County Professional Development Board will

approve local professional plans based on the standards approved by the state. Finally, at the local level, a District Professional Development Committee will assess local needs and plan local programs to be presented to the county board. However, it is critical to note that the local board retains the ultimate right to review and approve the plan.

Revised Implementation Date As of this writing, the state board was scheduled at its August meeting to amend the code to delay the implementation date from January 2000 to September 2000. This amendment has been recommended by the Professional Teaching Standards Board in order to allow for adequate preparation time and to align the starting date with the school year calendar. The New Jersey School Boards Association and others had argued that postponing the requirement's implementation date to coincide with the school year was logical given the linkage to the PIP process.

Developments with the State, County and Local Boards This past January, the Professional Teaching Standards Board was appointed and held a training retreat. Since then, the board has been meeting monthly and has established subgroups which are working on the professional development standards and on the criteria for qualifying professional development providers. Draft standards are scheduled to be available for review this fall.

Nominations for the County Professional Development Boards have been reviewed and approved by the commissioner. In each county, the county super-

intendent will call an initial orientation meeting in the fall. Regional training for county boards is scheduled to be held in December/January.

According to the Department of Education, districts should be forming local district committees pursuant to the procedures outlined in the regulations. Local committee work will begin in earnest when the PTSB establishes the aforementioned professional development standards and criteria. Districts should be alert to announcements of progress in this area.

The Negotiations Implications Every districts' negotiations process will be impacted by these requirements to some degree. In order for a board to meet these new negotiations challenges, it needs to be well-prepared when it goes to the bargaining table.

The first critical step in this preparation is understanding what issues are and are not negotiable with respect to the continuing education requirements. While the Public Employment Relations Commission (PERC) has yet to rule on the scope of negotiations issues involving the new code, existing labor law principles and case law can provide guidance.

For example, a proposal to limit or eliminate a board's ability to approve local inservice programs recommended by the local committee would not be negotiable. This would be inconsistent with the code. With respect to PIPs, any proposal that limits administrative discretion to finalize the contents of the PIP or requires binding arbitration of disputes involving PIPs, including the failure to achieve the identified objectives, would

appear to be non-negotiable. PERC has previously held that the development and contents of PIPs are outside the scope of bargaining. Similarly, under current law, neither the establishment of evaluation criteria or standards for assessing employee performance, or their application, are negotiable or arbitrable. Finally, any proposal which would require binding arbitration of evaluative comments, including progress toward meeting the continuing education requirements, would seem to conflict with existing law and be non-negotiable.

Negotiable issues would include all manner of terms and conditions of employment impacted by the requirements. For example, the cost of meeting the requirement in terms of who will pay for the cost of courses and training as well as possible limits on such costs would be negotiable items. Another negotiable issue would involve time: whether additional time is necessary to satisfy the requirements, and if so, whether compensation will be provided either in the form of a stipend or release time. Also, if increased inservice is offered during the work year, a longer work year may be necessary to avoid taking teachers out of the classroom. The eligibility of courses and inservice for horizontal advancement on the salary guide is also a negotiable subject, as well as the structure of the guide itself in terms of the number of columns and the size of column differentials. There are numerous other negotiable issues, and variations thereof, but boards must remember the maxim—the duty to bargain does not entail the obligation to concede.

Beyond the scope of negotiations issues, other critical preparation tasks mimic the steps that boards should be taking to prepare for any upcoming contract negotiations. One such task is to carefully review all existing contract provisions, past practices and policies that may be impacted by the new requirements. In general, boards should be seek-

ing to obtain, or retain, administrative control or discretion as well as cost certainty or containment. Thus, language or practices which provide, for example, cost limits on tuition reimbursement (individual and unit-wide) or administrative approval over coursework or inservice training should be sought or maintained. In contrast, provisions or practices which require automatic approval or reimbursement, or otherwise serve as a “blank check,” should be rejected or revised through the bargaining process.

The Union Response As many boards have already completed one cycle of bargaining since the adoption of the code, a pattern to union demands has begun to emerge. Predictably, unions are seeking boards’ commitment to fully fund costs. Thus, a common thread running through many of the proposals to date is a broad requirement that, “The board agrees to pay the full cost of tuition and other reasonable expenses incurred in connection with any workshops, seminars, conferences, inservice training sessions, or other such sessions which a teacher attends as part of his/her continuing education plan and/or is required and/or requested to attend by the administration.” Agreement to such a broad-brush commitment would certainly constitute an aforementioned “blank check,” and should be rejected.

Another common element in union proposals is to seek the board’s agreement that it, “Will provide inservice professional development experiences that will assist the teacher in attaining the required 100 hours of continuing education, and that inservice programs will be conducted during the in-school teacher workday and work year if teacher attendance is required.” In response, boards have been understandably reluctant or unwilling to provide such blanket guarantees. In fact, a typical board proposal has been to extend the existing work year so that inservice needs do not result in less time spent in the classroom with stu-

dents. As the code’s stated ultimate intent is to enable students to achieve high academic standards, ensuring that teacher-student contact time is not diminished would seem to be an aim that is shared by all.

Payment and/or release time spent on local district committee work or serving as a trainer is another typical union demand. If a board were to contemplate agreement to any such compensatory scheme, it should not consider any linkage to any automatically escalating per diem formula that is also typically proposed.

Union proposals which specify that the teacher shall fulfill the requirements in ways that *best serve his/her problems, functions, interests, and needs* would appear to improperly elevate the individual’s desires over those of classroom performance and the students’ needs in designing a meaningful professional development plan. If this language were read to provide the teacher with the authority to finalize the PIP or to otherwise interfere with the evaluation process, it would not be negotiable.

In fact, it should be stressed that some of the “boilerplate” union proposals appear to clearly involve topics that are not negotiable. Examples of this would include language that:

- indicates that the teacher shall receive credit toward meeting the 100-hour requirement for time spent serving on the local district committee or as a trainer. According to the code, the state Professional Teaching Standards Board will determine what are approved experiences that may be credited to meeting the requirement. Since, the stated purpose of the continuing education requirement is to provide meaningful professional development to enable students to achieve higher academic standards, these types of activities will not be permitted to count toward meeting the 100 hours. In any event, this would not appear to be an issue for the local

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negotiations process.

- specifies that all district inservice shall be eligible for continuing education credit. This would appear to limit the board's general ability to design the district's professional development, and negate the code's requirement that the board must approve any inservice program.
- establishes budgetary and support personnel guarantees for the local district committee. The development of the district budget and personnel hiring/deployment have long been held to be non-negotiable issues.

Whenever bargaining proposals are exchanged, a legal analysis of the union's proposals should be completed by your labor professional and/or the Labor Relations Department of NJSBA. The board should not negotiate over any subject that appears to be outside the scope of bargaining. If the union continues to assert that the issue is negotiable, a scope petition can be submitted to PERC for a ruling.

Available Resources For a complete understanding of the requirements and how boards can effectively meet their responsibilities, consult the following articles in the NJSBA *Negotiations Advisor*—"The Continuing Education Requirement and Boards of Education," "Board Considerations in Implementing the Continuing Education Requirement," and "An Analysis of Professional Development Clauses."

In addition, sample continuing education policies can be obtained by contacting NJSBA's Policy and Library Resources Department.

For questions on any aspect of the code, call NJSBA's Labor Relations Department at 1-888-88NJSBA or visit our Web site at www.njsba.org for further updates on the continuing education requirements. **SL**